

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF CALIFORNIA



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ASSISTANT CHIEF ADMINISTRATIVE LAW JUDGE W. ANTHONY
COLBERT and ADMINISTRATIVE LAW JUDGE HAZLYN FORTUNE,
co-presiding

Dennis Reis and Deborah Reis,)	STATUS
)	CONFERENCE
Complainants)	
vs.)	
)	
Sonoma Marin Area Rail Transit District)	
(SMART),)	Case
)	21-11-016
Defendant)	
)	

REPORTER'S TRANSCRIPT
Virtual Proceeding
February 23, 2023
Pages 1 - 34
Volume 1

Reported by: Ashleigh E. Button, CSR No. 14013

VIRTUAL PROCEEDING

FEBRUARY 23, 2023 - 10:05 A.M.

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ADMINISTRATIVE LAW JUDGE FORTUNE: We will be on the record. I acknowledge that we are starting this hearing at 10:06 p.m. -- I'm sorry, excuse me -- a.m.

My name is Hazlyn Fortune. I'm the assigned administrative law judge for complaint, C.21-11-016. Mr. and Mrs. Reis versus Sonoma Marin Area Rapid Transit or SMART.

It is February 23rd at 10:06 a.m., and this is the time and place for status conference for this proceeding.

I will first go over some ground rules. Because this hearing is being conducted virtually and being recorded by a reporter, it is critical that we all speak slowly and clearly. Do not speak unless I address you. I may repeat questions to you individually so that the court reporter can accurately capture your statements. Avoid speaking over each other.

If possible, please use headphones or earbuds to ensure the best audio quality. Do not use speakerphone audio. Please mute your audio unless you are speaking. Please do not speak over each other.

Identify yourself the first time you speak by

1 stating your full name, and then spelling your last
2 name.

3 I will take care of attendances right now.
4 Ms. Sutherland, would you please introduce yourself and
5 let us know what you are representing today?

6 MS. SUTHERLAND: Yes, good morning. Jessica
7 Sutherland, I represent SMART.

8 ALJ FORTUNE: Thank you.

9 MS. SUTHERLAND: Thank you. And I am with
10 Bill Gamlen today, your Honor.

11 ALJ FORTUNE: Thank you.

12 MS. SUTHERLAND: Chief engineer -- sorry to
13 speak over you.

14 ALJ FORTUNE: It's okay, go ahead.

15 MS. SUTHERLAND: Chief engineer for SMART.

16 ALJ FORTUNE: Thank you.

17 MS. SUTHERLAND: Thank you.

18 ALJ FORTUNE: Mr. Ripley, would you please
19 introduce yourself and let us know who you're
20 representing?

21 MR. RIPLEY: Yes. This is Reed Ripley,
22 attorney on behalf of Mr. and Mrs. Reis.

23 ALJ FORTUNE: Thank you. Well, let's begin our
24 discussion.

25 We are here today to discuss the next steps for

1 this proceeding. I want to emphasize that the
2 Commission is definitely committed and will be
3 proceeding ahead and moving forward with this complaint.

4 Later on, I will be sharing a proposal that
5 will guide our later discussions. The current status of
6 this proceeding is that it -- essentially, it is
7 suspended pursuant to SMART's decision not to comply
8 with the July 8, 2022, ALJ ruling directing it to file
9 an application for a private crossing as one pathway to
10 resolve the incident complaint.

11 I have developed a proposal to move this
12 proceeding forward with input from the Rail Safety
13 Division, ALJ management and AC Colbert.

14 I have extended the statutory deadline for this
15 proceeding to allow sufficient time for a reasonable
16 resolution that supports a final decision. The revised
17 statutory deadline for this proceeding is now
18 October 2, 2023. This statutory deadline may be further
19 extended as needed to support the activities within this
20 complaint.

21 On June 13, 2022, the Reises filed a PHC
22 statement with exhibits. Included in the exhibits
23 accompanying the PHC statement was an internal SMART
24 developed five-stage private crossing application
25 process. The states include, number one, application;

1 number two, preliminary analysis; number three,
2 diagnostic review; number four, license agreement and
3 issuance of license; and number five, construction and
4 opening.

5 After consulting with AC Colbert and the Rail
6 Safety Division Management, this is the proposal that we
7 are going to move forward with: I will vacate the
8 ruling directing SMART to file an application for a
9 private crossing for this complaint. I will not dismiss
10 this complaint, but instead will develop a schedule to
11 follow SMART's private crossing application process.

12 I will be directing SMART to file a report with
13 the Commission at the completion of each stage of its
14 own application process. If additional time is needed
15 for any stage, SMART will make a request with supporting
16 documentation for an extension of the schedule that we
17 will develop today. It is appropriate that the
18 Commission's Rail Safety Division staff be involved in
19 stage 3 of SMART's private crossing application process
20 to ensure that appropriate safety measures are included
21 for the design of any crossing.

22 After all stages of SMART's private application
23 process are completed, a decision will be rendered. If
24 parties are unable to come to an agreement at any stage
25 of the process, I strongly recommend that they

1 participate in the Commission's ADR or Alternative
2 Resolution Process as appropriate.

3 During a previous status conference, I asked
4 SMART's engineering staff member about the potential
5 timeline for each stage of its private crossing
6 application process.

7 Before we work on a schedule, what questions
8 does -- do anyone have?

9 Mr. Ripley, do you have any questions so far?

10 MR. RIPLEY: Sorry, your Honor, I was on mute.
11 None at this time.

12 ALJ FORTUNE: Great.

13 Ms. Sutherland, do you have any questions at
14 this time?

15 MS. SUTHERLAND: None at this time, your Honor,
16 just still listening.

17 ALJ FORTUNE: Great. All right.

18 Ms. Sutherland, you mentioned that you have a
19 representative from your engineering staff ready to
20 address questions about the application process. Is
21 that person ready to -- to speak now?

22 MS. SUTHERLAND: Sure. I have Mr. Gamlen with
23 me now.

24 ALJ FORTUNE: Mr. Gamlen, please say your full
25 name and spell your last name.

1 AC ALJ COLBERT: Your Honor?

2 ALJ FORTUNE: Yes?

3 AC ALJ COLBERT: This is Assistant Chief
4 Colbert. Mr. Ripley, do you have a camera?

5 MR. RIPLEY: I do, your Honor. I asked for the
6 panelist password right -- right before we started on
7 the record and I never received that, so that's why I am
8 working on the telephone.

9 AC ALJ COLBERT: The -- I thought you were
10 upgraded to panelist, so your camera should be able to
11 access.

12 MR. RIPLEY: Yeah, I tried to use my calendar
13 link, and it was not following through. It was asking
14 me for a panelist password, and my understanding was
15 that was 2023 based off of the e-mails, and that was not
16 working.

17 ALJ FORTUNE: Why don't we go off the record to
18 resolve the video issues?

19 (Off the record.)

20 ALJ FORTUNE: While we were off the record, we
21 took care of some IT issues for one of our participants,
22 and now we will move ahead.

23 I believe that what we're going to do right now
24 is go off the record right now to collect information to
25 develop a schedule for moving ahead with SMART's private

1 crossing application process.

2 We will be off the record.

3 (Off the record.)

4 ALJ FORTUNE: So, please explain a bit about
5 stage 2. I had mentioned while we were off the record
6 that the simple crossing will take two to three weeks if
7 no telemetry was needed and asked you to confirm that
8 timeline. Please do so now.

9 MR. GAMLEN: Okay. For the record, I would
10 like to start by saying I didn't really come prepared to
11 discuss a timeline today, but I am happy to do my best
12 to answer your questions and provide that information.

13 We have received the application. The
14 application -- the uses identified in the application
15 are very broad, so I think as part of the stage 2,
16 preliminary analysis, we will have to dig into those
17 uses and better understand the desired use of the
18 crosses, which will shape some of the solutions or
19 protections that could be put in place for a crossing at
20 that location.

21 ALJ FORTUNE: All right. The complicated
22 crossing, you said that that could take four weeks if
23 telemetry is needed, if there was an active warning
24 device needed. Is that still true?

25 MR. GAMLEN: You know, I'd qualify that

1 response in the sense that there's a lot of third-party
2 dependencies as the crossings become more complicated.
3 So, there are things like, perhaps, PG&E service for a
4 crossing like that. There may be access questions that
5 may require easements to be able to maintain the
6 crossing and things like that, so putting timeframes on
7 that is challenging.

8 If everything lined up, yes, perhaps that
9 timeframe could be achieved.

10 ALJ FORTUNE: All right. Since there -- there
11 are two phases to this stage, why don't we look at what
12 a reasonable timeline will be because this is the stage
13 that you will be going into.

14 So, if you think four weeks would be needed for
15 a more complicated issue, if it looks like it would be a
16 simpler crossing then that time would be shortened and
17 you can identify that and report out on it.

18 So, for stage 2, you know, we're working back
19 from -- let's look at the -- a calendar.

20 Today is the 23rd, and I -- when -- you know,
21 this is something that we want to evolve and launch.
22 So, if we're looking at, say, a March 1st start for
23 phase 2 or stage 2, what would be a date by when that
24 should be completed?

25 MR. GAMLEN: I would suggest we put a time

1 range on phase 2, the preliminary analysis.

2 ALJ FORTUNE: Sure.

3 MR. GAMLEN: Maybe from one month to six
4 months.

5 ALJ FORTUNE: One month to six months, that
6 seems a bit long. I mean, we have got until October --
7 the current statutory deadline for this is October 2nd,
8 and you just stated that it would be four weeks or maybe
9 a little bit more than that, so six months is a bit much
10 for -- unless there is something I am not understanding.

11 MS. SUTHERLAND: Your Honor, can I ask a
12 question at this juncture?

13 ALJ FORTUNE: Please identify yourself for the
14 court reporter's benefit.

15 MS. SUTHERLAND: Jessica Sutherland for SMART.

16 ALJ FORTUNE: Are you --

17 MS. SUTHERLAND: May ask a question.

18 ALJ FORTUNE: Yes, please do.

19 MS. SUTHERLAND: So, this is SMART's voluntary
20 application process, and it does involve sort of a back
21 and forth with the complainants; and so, some of it is
22 not entirely within our control correct on timelines.
23 This is also the first application, I think we mentioned
24 last time, so we are going with estimates; and so, that
25 is difficult.

1 I also -- is today's proposal something that
2 we're going to be able to come back after today and --
3 and respond to or -- we weren't aware that we -- that a
4 proposal such as this was going to be made today, so I
5 am just curious how it plays out after today?

6 ALJ FORTUNE: Well, after today, after the
7 conclusion of this hearing, the former ruling would be
8 vacated; that is the next thing that would go out. And
9 then we would have a range that -- what we are
10 developing right now for each stage.

11 If additional time is needed, you make a
12 request to say, hey, it looks like we need another
13 month, but to -- it just seems the -- if we want to stay
14 close to the statutory deadline of October 1, which can
15 be extended if needed, but I would like to have us just
16 be reasonable for each stage and put a stage that is
17 workable; and then, if additional time is needed, it's
18 requested. If things happen in a shorter period, it's
19 reported out.

20 MS. SUTHERLAND: Okay. Yes. I guess, I'm -- I
21 am sort of concerned with sort of -- sort of how this
22 plays out, what kind of precedent it sets, and given
23 that this is a voluntary process, I am still unsure --
24 you know, SMART doesn't believe that any allegations
25 have been made that would sort of render a jurisdiction

1 under a complaint; and so --

2 AC ALJ COLBERT: Your Honor?

3 MS. SUTHERLAND: I --

4 AC ALJ COLBERT: This is Assistant Chief
5 Colbert.

6 ALJ FORTUNE: Go ahead, Assistant Chief.

7 AC ALJ COLBERT: Ms. Sutherland, you keep
8 saying, "this is voluntary."

9 So, are you saying that SMART can say we are
10 not going to cooperate. We are not going to help build
11 this crossing and just walk away and ignore what the
12 Commission is saying?

13 MS. SUTHERLAND: Your Honor, that is absolutely
14 not what I am saying. It's the -- the property owner,
15 as we stated in the past, can avail themselves of the
16 application process; and there's also an application
17 petition process via 75-D General Order and 7537 where
18 they can petition the CPUC; and so, the intention and
19 the spirit of the -- SMART's application process is not
20 that it runs concurrent with the complaint proceeding.
21 It is so that the private property owner and SMART can
22 try to work towards a -- an agreement together.

23 AC ALJ COLBERT: But you keep using the word,
24 "voluntary."

25 MS. SUTHERLAND: The private property owner can

1 voluntarily apply if -- should they want to seek an
2 agreement with SMART.

3 AC ALJ COLBERT: You seem to be using voluntary
4 in the context of what SMART is doing. That SMART is
5 voluntarily doing this process.

6 MS. SUTHERLAND: Your Honor --

7 AC ALJ COLBERT: At the same time, you've
8 indicated that this is the first time that SMART has
9 implemented their existing process, which I assume is a
10 process that you all have put together to address these
11 kinds of issues.

12 So, enlighten me on what you're saying.

13 MS. SUTHERLAND: Well, for the record, your
14 Honor, I am not sure -- I am not sure -- I am responding
15 to two judges. I am not sure what your -- Your Honor's
16 role is in this matter. The last time I had asked some
17 of your --

18 AC ALJ COLBERT: Ms. Sutherland, I am the
19 Assistant Chief Judge. I oversee all complaints and all
20 transportation matters for the Public Utilities
21 Commission.

22 MS. SUTHERLAND: Sure, your Honor, and I -- I
23 just -- I believe I responded clearly to your question,
24 and I am not saying that SMART can voluntarily
25 participate. What I am saying is this is a process for

1 a private property owner to avail themselves. They do
2 not need to file a complaint to do that.

3 It seems that filing a complaint was a
4 workaround working with SMART and potentially having to
5 take some of the financial responsibility and, instead,
6 they used this sort of litigation to file a complaint.
7 I am still unclear why our process is in this complaint
8 proceeding, and I am seeking some clarity on -- on that.

9 AC ALJ COLBERT: Has this process been used
10 before that you have set out -- that you're setting out?

11 MS. SUTHERLAND: Not with -- not at this time,
12 your Honor, no.

13 AC ALJ COLBERT: So, this is the first time the
14 process has been used? When the initial applica -- when
15 the initial complaint was filed and Judge Fortune was
16 assigned to this, SMART every step of the way, from my
17 understanding of it, has -- has not been cooperative;
18 and at some point, SMART said, "Well, we do have a
19 process. This is the process, and the -- and the
20 complainant hasn't availed themselves of the process, so
21 we don't understand why the complainant is even filing
22 the complaint because we have this existing process,"
23 which you just acknowledged has never been used before.

24 MS. SUTHERLAND: So, your Honor, I would
25 like --

1 AC ALJ COLBERT: So, in tone -- in tone and
2 approach, yes, I am showing concern because this has
3 been going on for an extended period of time. I oversee
4 everything that your company does in these matters, and
5 I have found you uncooperative.

6 Do you understand my point now?

7 MS. SUTHERLAND: Your Honor, I would like to
8 strike that from the record, and I object to that. I
9 don't know when SMART has been uncooperative one time
10 during this proceeding. I -- I don't know when you
11 found us to be uncooperative.

12 AC ALJ COLBERT: When did you raise the --

13 MS. SUTHERLAND: I'm not --

14 AC ALJ COLBERT: -- issue that you had a
15 process to address these issues which has never been
16 used before?

17 MS. SUTHERLAND: Your Honor, we have been
18 reaching out to the plaintiff since, I believe, February
19 of 2022 to file our application. We worked with them.
20 We -- we scheduled a meeting with them from May 2022 at
21 their request; they canceled it. Turned in an
22 application that was incomplete, we promptly wrote back
23 and asked them to complete it. I wrote them this
24 October and this December asking if they would like to
25 proceed with our internal process; they declined.

1 At this juncture, I am not --

2 AC ALJ COLBERT: This complaint was filed --
3 this complaint was filed in 2021.

4 When did you -- when did SMART say that you had
5 a process to address this issue?

6 MS. SUTHERLAND: Your Honor, I don't --

7 ALJ FORTUNE: Actually --

8 MS. SUTHERLAND: -- know that --

9 ALJ FORTUNE: SMART did actually -- this is
10 ALJ Fortune speaking.

11 SMART actually did not declaratively state that
12 they had an internal process for a private application.
13 It was -- it was discovered by the plaintiff's
14 representatives, and the -- the plaintiffs availed
15 themselves, and this was made apparent at the
16 June 13, 2022, PHC statement that the Reises had filed
17 and they attached a copy of the application; and that's
18 when it was made aware to me that there was a -- a -- an
19 internal process.

20 AC ALJ COLBERT: Thank you, Judge Fortune.

21 So, Ms. Sutherland, from my perspective, it is
22 a mischaracterization to say that SMART has, from the
23 beginning of this process, this complaint, tried to
24 resolve it and tried to point out that there was an
25 internal process that the plaintiffs could have availed

1 themselves of.

2 MS. SUTHERLAND: Your Honor --

3 AC ALJ COLBERT: That is not accurate.

4 MS. SUTHERLAND: Your Honor, I am just not
5 aware of any requirement that SMART had to have an
6 internal process. I think it's a good idea that we have
7 one.

8 AC ALJ COLBERT: Counsel, you didn't --

9 MS. SUTHERLAND: And I also --

10 AC ALJ COLBERT: -- say that SMART had to have
11 an internal process. One of the arguments that you're
12 making now is that you do have an internal process; and
13 since you do have an internal process, there was no
14 reason for the complainant to move forward with this
15 complaint. It's unnecessary because you have an
16 internal process.

17 Now, you have just --

18 MS. SUTHERLAND: Your Honor --

19 AC ALJ COLBERT: -- said that you don't have to
20 have an internal process. So, the point I am --

21 MS. SUTHERLAND: Your Honor --

22 AC ALJ COLBERT: -- making -- and we can go
23 back and forth about this, and if you think that's
24 beneficial to you, that's fine.

25 The point I am making, and my initial point,

1 which you sought to strike, which is denied, is that I
2 said SMART has not been consistent and accurate and
3 cooperative in trying to resolve this; and this is what
4 we are trying to do.

5 MS. SUTHERLAND: Your Honor, I don't believe --
6 I believe initially in our answer, we said they could
7 apply to SMART, and we also said that they could apply
8 to the PUC; and so, I -- I am at a loss of how SMART has
9 been uncooperative. We, again, have reached out to the
10 complainant several times about whether they want to
11 proceed with our process, and --

12 ALJ FORTUNE: Well, let's get to the truth of
13 the matter that -- because that was not my
14 understanding. This is ALJ Fortune speaking.

15 As I stated earlier, all the activity in this
16 complaint has been suspended. The proposal vacates a
17 direction to SMART, which they -- which you all have
18 said was inappropriate with many citations as to why you
19 should not be directed to file an application. That is
20 one path to resolve this. And after consulting with
21 internal staff and AC Colbert, we have decided to vacate
22 that so that we can use a process that you developed in
23 the context of this complaint to move ahead.

24 So, all we're doing right now is establishing a
25 schedule, because dismissing the complaint is not an

1 option. We are moving ahead. We are moving ahead, and
2 you have developed this process, so we're -- we want to
3 establish clear direction to you and the complainant for
4 the timeframe to follow your process. That is all that
5 is happening here.

6 MS. SUTHERLAND: Thank you, your Honor.

7 ALJ FORTUNE: All right. I would like to hear
8 from the -- the representative for Mr. and Mrs. Reis,
9 because I was unaware that -- that you, SMART, had
10 reached out to them, and that your -- to -- to move
11 ahead. Because right now, nothing was happening,
12 nothing was communicated to me or filed with me. So,
13 I -- I -- I don't -- you know, I think we should just
14 move on, and moving on means following a process that
15 you developed.

16 So, where we are right now is talking about
17 stage 2, and I would like to reconsider six months for
18 that stage. We don't want this to be a long process.

19 Neither, in my opinion, yourselves or the
20 applicants had enough information when this complaint
21 was filed. Moving ahead with your process and the
22 preliminary analysis will let us know what is needed for
23 this crossing. So, six months for stage 2 seems a bit
24 long, so let's talk about that.

25 MR. GAMLEN: Perhaps, we could budget -- sorry,

1 this is Bill Gamlen, Chief Engineer with SMART.

2 Perhaps we could budget for some intermediate
3 steps, and what I mean by that is when we go back with
4 the application, not having a good detailed
5 understanding of specifics of how this crossing is
6 envisioned to be used, the applicant may need to develop
7 some plans, develop some details, and that may take them
8 some time, and I'm -- I can't control that part of the
9 process. So, that would be, like, an intermediate step
10 for them to come up with more detailed plans, perhaps
11 engineering drawings, sketches, something to convey the
12 details of what they would like to do at this location.

13 ALJ FORTUNE: I believe --

14 MR. GAMLEN: So, that's why I am --

15 ALJ FORTUNE: Go ahead. Mr. Gamlen, first of
16 all, please spell your last name.

17 MR. GAMLEN: G-a-m-l-e-n.

18 ALJ FORTUNE: Great, thank you. I believe that
19 with the prehearing conference that happened earlier in
20 2022, materials were submitted about proposed -- exact
21 proposed locations, and I will have Mr. Ripley respond
22 to that. I just wanted to confirm that that was so.

23 MR. RIPLEY: Yes, your Honor. This is Reed
24 Ripley for the Reises. We -- it's perfectly reasonable
25 to point out that there might need to be some more

1 detail as far as exactly what kind of crossing.

2 I will note that in that information that we
3 provided, we did suggest a type of crossing that might
4 be reasonable, but if there are more details that need
5 to get sorted out, we are perfectly happy to have those
6 conversations. Those are the kind of conversations we
7 have been looking for for a very long time.

8 So, if we need to provide additional
9 information, we will readily do that and do it promptly
10 according to whatever schedule we agree to.

11 ALJ FORTUNE: All right. So, I will go back to
12 Mr. Gamlen. So, stage 2, why don't you start with what
13 you think would be needed? So, you think that there
14 will be a back and forth between yourself and the Reises
15 to get specific details, engineering details about this
16 crossing? I mean, we just want to -- or I would like to
17 establish a reasonable timeframe for that particular
18 back and forth for this stage.

19 MR. GAMLEN: Yes, your Honor. Bill Gamlen with
20 SMART.

21 From the description in the application, it
22 sounds like this crossing will function similar to a
23 public crossing.

24 ALJ FORTUNE: Uh-huh.

25 MR. GAMLEN: Keep -- a lot of different parties

1 will probably use this crossing in different
2 applications in different size groups. So, it's
3 starting to appear that it may need to be a fully active
4 crossing.

5 ALJ FORTUNE: Okay.

6 MR. GAMLEN: If we get into fully active
7 crossings, we are probably going to have to get
8 engineering design done, some survey done, figure out
9 how power is going to get to that location. There's a
10 lot of detailed work that is going to have to happen.
11 That takes time, and the Reises will have to budget for
12 that time, so I am hesitant to commit to how long this
13 process can take if I am --

14 ALJ FORTUNE: Right.

15 MR. GAMLEN: -- not controlling those steps.

16 ALJ FORTUNE: I got -- I got it. But as I said
17 before, we are setting some ranges, which is what you
18 suggested we do, correct?

19 MR. GAMLEN: Correct.

20 ALJ FORTUNE: I am setting some ranges, and if
21 that range needs to be extended for any reason, then
22 that range can be extended.

23 So, let's set a --

24 MR. GAMLEN: Okay.

25 ALJ FORTUNE: -- range for step 2.

1 MR. GAMLEN: I believe I proposed one to
2 six months. You had indicated six months was
3 unacceptable. So, one to five months?

4 ALJ FORTUNE: Well, I said that because when I
5 -- we spoke earlier, you had said four weeks, so I am
6 just trying to understand. I realize that there will be
7 back and forth.

8 So, if -- if you think six months is a -- is a
9 reasonable range and you get done in two months, then we
10 would move to the next stage, right, is that -- that's
11 what -- that is what I am envisioning.

12 MR. GAMLEN: Correct, absolutely.

13 ALJ FORTUNE: Okay.

14 MR. GAMLEN: And I guess we can put a shorter
15 timeframe with the understanding --

16 ALJ FORTUNE: That it can be extended.

17 MR. GAMLEN: Right. And I guess we are going
18 to be doing status reports. So, in that status --

19 ALJ FORTUNE: Correct.

20 MR. GAMLEN: -- report, we can say, "This has
21 been completed. This is the next step. This is what
22 has to happen. We are waiting on that information."

23 ALJ FORTUNE: All right. So, for stage 2, we
24 can reduce to one to three months, and then extend if
25 needed?

1 MR. GAMLEN: Sure.

2 ALJ FORTUNE: All right. Let me -- thank you
3 so much Mr. -- excuse me, I am spacing -- Gamlen for --
4 for letting us know that.

5 Mr. Ripley, please let me know if that is
6 acceptable or -- you know, I -- I expect that the Reises
7 will be forthcoming in giving any information needed for
8 this stage, so that it can be completed in a timely
9 manner.

10 Please let me know if you agree one to three
11 months for this stage 2 and extension if needed?

12 MR. RIPLEY: Yes, your Honor. Reed Ripley on
13 behalf of the Reises here.

14 It sounds like -- so, the original -- we talked
15 about four weeks in the last status conference and --
16 and as far as the timeframe of the most complicated
17 crossing here. So, it sounds like any additional time
18 we are talking about, the increased range would be the
19 time that it stakes the Reises to provide this
20 information. I don't see how that is going to be an
21 additional two months to get all the way from one to
22 three months, so I think we would prefer to have
23 something like one to two months, and if we get through
24 that process and it is something that maybe the Reises
25 are still sorting out, they need to find some details as

1 far as what specific uses -- and that is on them -- that
2 will be in the report, and we can extend it at that
3 point. But we -- I don't think we would like to extend
4 this one to three months. That a little too long of a
5 range there.

6 ALJ FORTUNE: Thank you, Mr. Ripley. We will
7 go back to representative for SMART.

8 Ms. Sutherland, would you be able to accept one
9 to two months for this stage with extension if needed?

10 MS. SUTHERLAND: Your Honor, that sounds
11 reasonable. I -- I just defer to Mr. Gamlen, but that
12 sounds reasonable to me.

13 ALJ FORTUNE: All right --

14 MR. GAMLEN: Sure, that's fine.

15 ALJ FORTUNE: -- Mr. Gamlen?

16 MR. GAMLEN: Yes, that's fine.

17 ALJ FORTUNE: That's fine? Okay.

18 So, let's move on to the diagnostic review
19 stage. Before, I think a month was what was estimated
20 for this stage.

21 Mr. Gamlen, does that seem reasonable? I --
22 and I say that, because RSD staff would like to be
23 involved with any back and forth between yourselves and
24 the Reises regarding this issue or this stage.

25 So, please explain to me a little bit about

1 what happens in stage 3, which is diagnostic review, and
2 what you think is a reasonable time for this stage?

3 MR. GAMLEN: The diagnostic review is when we
4 father all the parties, we typically use it in a public
5 crossing application where we would have representatives
6 from the city -- a traffic engineer, a public works
7 representative, sometimes a public safety officer,
8 representatives of the Rail Safety Division and
9 representatives of the railroad. We all look at the
10 crossing and discuss the appropriate safety treatments.

11 We're proposing to apply this in our private
12 crossing application to a private crossing, so I think
13 we would invite the CPUC, the Rail Safety Division,
14 because we work closely with them throughout matters on
15 the railroad --

16 ALJ FORTUNE: Right.

17 MR. GAMLEN: -- so, we would include the Rail
18 Safety Division, the property owners so they can -- or
19 their representatives, so they can hear and discuss the
20 crossing firsthand and representatives of SMART.

21 So, really, it's just a matter of getting
22 everybody's schedules to align, so we can all have a
23 site visit to do that. So, I think a month is probably
24 sufficient for that stage.

25 ALJ FORTUNE: All right. Thank you so much,

1 Mr. Gamlen.

2 Mr. Ripley, would you please comment on whether
3 that timeline is reasonable for yourself and your
4 clients?

5 MR. RIPLEY: Reed Rip -- yeah, I am unmuted.
6 Reed Ripley here. Yes, that seems reasonable to me,
7 your Honor.

8 ALJ FORTUNE: All right. So, one month for
9 diagnostic review.

10 All right. We will move on to step 4,
11 licensing agreement.

12 Mr. Gamlen, would you speak to the needs in
13 terms of timing for this particular stage?

14 MR. GAMLEN: So, this would be the spot at
15 which we have agreed on the physical crossing
16 characteristics, the appropriate safety treatments, we
17 have engineering designs in place, we have agreements on
18 who is going to do what. So, really this is a matter of
19 finalizing the license agreement itself, so we would
20 have a draft that all parties have agreed on; and the
21 general manager would have to take it to our board for
22 approval.

23 Assuming that all those things are done and
24 it's really a matter of getting the board to approve an
25 agreement, probably a month is sufficient for that.

1 ALJ FORTUNE: All right. And -- and the -- the
2 understanding that I have is that if there are things
3 that come up through any of these stages by petition and
4 substantiation, the time can be extended, and you will
5 let us know what the time would be needed.

6 But be -- with that understanding, I will move
7 to Mr. Ripley. Mr. Ripley, Mr. Gamlen has represented
8 that one month would be sufficient for the licensing
9 agreement, with extension if needed, is that timeframe
10 acceptable -- or is that something that your clients can
11 work with?

12 MR. RIPLEY: Reed Ripley here. Yes, your
13 Honor, that is acceptable.

14 MR. GAMLEN: Your Honor, may I put a caveat on
15 that?

16 ALJ FORTUNE: Sure. Go ahead, Mr. Gamlen.

17 MR. GAMLEN: Our board meets once a month, the
18 third week of the month. So, depending on how the --
19 when we agree on the agreement and when that aligns, it
20 could take a little bit longer than a month.

21 ALJ FORTUNE: All right. Do you want to say
22 one to three months for this --

23 MR. GAMLEN: Yes, that would be acceptable.

24 ALJ FORTUNE: -- stage?

25 All right. Now, stage 5, Mr. Gamlen, would you

1 please describe what you think might be needed and what
2 timeframe would be reasonable?

3 MR. GAMLEN: It's really challenging at this
4 juncture to put a timeframe on construction, because we
5 really don't know what we're building at this time.

6 ALJ FORTUNE: Got it.

7 MR. GAMLEN: Could -- could we revisit that in
8 the future when we're farther along in the process?

9 ALJ FORTUNE: We definitely can. What would be
10 reasonable -- I mean, should we do that? Like, we can
11 set -- or a time to confer after the stage -- step 3 or
12 stage 3, the diagnostic review, because by then you
13 would have worked out -- I'm assuming -- the details and
14 needs for the -- and safety for the crossing; and
15 pending approval from your board and anything needed for
16 step 4, you would have a better estimate of what
17 timeframe stage 5 would take? Is that reasonable or
18 would you need to wait later?

19 MR. GAMLEN: I think that's reasonable, your
20 Honor.

21 ALJ FORTUNE: All right. So, we -- we can look
22 at setting a time after stage 3 to meet and determine
23 what would be a reasonable range of time for step 5.

24 Mr. Ripley, is that a reasonable -- or do -- do
25 your -- do you and your clients think that that would be

1 a reasonable approach?

2 MR. RIPLEY: Yes, your Honor, that sounds
3 reasonable.

4 ALJ FORTUNE: Okay. So, we -- we're looking at
5 maybe another status conference after stage 3 is done.

6 All right. So, to review, we have worked out a
7 schedule agreeable to both sides for the remaining
8 stages of SMART's internal private application process.

9 For stage 2, both sides have agreed to one to
10 two months for completing this stage, and now I'm
11 assuming that this -- the timing would start March 1.
12 So, previous to March 1, both sides can start talking
13 with each other about what needs to be submitted in
14 order to move quickly and efficiently through stage 2.
15 So, one to two months has been allotted for the time
16 with extension if needed.

17 For stage 3, diagnostic review, it's estimated
18 that one month would be needed for this stage, and it
19 can be extended if substantiated. And after stage 3,
20 there will be another status conference to assess the
21 construction needs and set a timeline for stage 5.

22 For stage 4, we are estimating one to
23 three months for licensing agreements and other related
24 activities, and that hopefully will take us to resolving
25 this complaint within this calendar year.

1 As I stated before, if things arise that need
2 resolution, the Commission has an Alternative Dispute
3 Resolution process that can be used to address any
4 issue.

5 I would like to give both sides time to respond
6 to all that we have discussed until now.

7 I will have Ms. Sutherland please go first.

8 MS. SUTHERLAND: No further comment, your
9 Honor. Thank you.

10 ALJ FORTUNE: You're welcome.

11 All right. Mr. Ripley?

12 MR. RIPLEY: Yes, your Honor. I -- I just have
13 one clarification question about the report at -- at the
14 end of these phases. Can you describe a little bit
15 about -- more in detail about what you're looking for
16 whether that is going to be filed in our complaint
17 proceedings, is it going to be joint, or is it only
18 going to come from SMART?

19 ALJ FORTUNE: I think it should be joint and
20 filed to -- by, you know -- on all parties to the
21 proceeding under the complaint. This is -- all this is
22 happening in the context of the complaint.

23 When all the stages are completed, a decision
24 will be rendered. I mean, I think this is a great
25 process, and I want to commend SMART for having

1 developed it, for just trying to use it. There might be
2 other things that come up that other parties that want a
3 private crossing that, you know, we can use this as a
4 model for.

5 So, I am actually very excited to have us move
6 along and investigate what this will all entail and get
7 an idea of real-world timelines for getting this --
8 applying some of the elements of a public crossing to
9 this private crossing request.

10 So, yes, I believe that joint filings at the
11 end of each stage would be fine and definitely to the
12 entire service list -- distribution to the entire
13 service list.

14 MR. RIPLEY: That -- that sounds imminently
15 reasonable, your Honor. That is what we would prefer
16 anyway, so, thank you.

17 ALJ FORTUNE: All right. Well, I thank
18 everyone for participating in the status conference
19 today. A new ruling vacating the July 8th ruling will
20 come out shortly, and I am hopeful that we can conclude
21 this by the end of the calendar year; and we will adjust
22 the -- the statutory deadline as needed to make sure
23 that both sides have enough time to address their needs,
24 and that this -- this process is fair to both sides and
25 moves forward.

1 Thank you very much. We are adjourned.

2 (At the hour of 10:53 a.m., this matter
3 having been concluded, the Commission then
4 adjourned.)

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BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE
STATE OF CALIFORNIA

CERTIFICATION OF TRANSCRIPT OF PROCEEDING

I, ASHLEIGH BUTTON, CERTIFIED SHORTHAND REPORTER
NO. 14013, IN AND FOR THE STATE OF CALIFORNIA, DO
HEREBY CERTIFY THAT THE PAGES OF THIS TRANSCRIPT
PREPARED BY ME COMPRISE A FULL, TRUE, AND CORRECT
TRANSCRIPT OF THE TESTIMONY AND PROCEEDINGS HELD IN
THIS MATTER ON FEBRUARY 23, 2023.

I FURTHER CERTIFY THAT I HAVE NO INTEREST IN THE
EVENTS OF THE MATTER OR THE OUTCOME OF THE PROCEEDING.

EXECUTED THIS APRIL 21, 2023.


ASHLEIGH BUTTON
CSR NO. 14013

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PUBLIC UTILITIES COMMISSION, STATE OF CALIFORNIA
SAN FRANCISCO, CALIFORNIA

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